

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

LAMONT J. HOWARD,

Petitioner,

v.

CATES, Warden,

Respondent.

No. 1:20-cv-00933-NONE-JLT (HC)

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS, DISMISSING PETITION, DIRECTING THE CLERK OF COURT TO ASSIGN DISTRICT JUDGE FOR PURPOSE OF CLOSING CASE AND THEN CLOSE THE CASE, AND DECLINING TO ISSUE CERTIFICATE OF APPEALABILITY

(Doc. No. 11)

Petitioner is a state prisoner proceeding *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On August 11, 2020, the magistrate judge assigned to the case issued findings and recommendations to dismiss the petition. (Doc. No. 11.) The findings and recommendations were served upon all parties and contained notice that any objections thereto were to be filed within twenty-one days from the date of service of that order. To date, no party has filed objections.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the pending findings and recommendations are supported by the record and proper analysis.

In addition, the court declines to issue a certificate of appealability. A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of

1 his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537  
2 U.S. 322, 335–36 (2003). If a court denies the petition, the court may only issue a certificate of  
3 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.  
4 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that  
5 “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have  
6 been resolved in a different manner or that the issues presented were ‘adequate to deserve  
7 encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting  
8 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

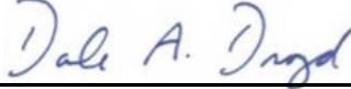
9 In the present case, the court finds that petitioner has not made the required substantial  
10 showing of the denial of a constitutional right to justify the issuance of a certificate of  
11 appealability. Reasonable jurists would not find the court’s determination that petitioner is not  
12 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to  
13 proceed further. Thus, the court DECLINES to issue a certificate of appealability.

14 Accordingly, the court orders as follows:

- 15 1. The findings and recommendations, filed August 11, 2020 (Doc. No. 11), are  
16 ADOPTED IN FULL;
- 17 2. The petition for writ of habeas corpus is DISMISSED;
- 18 3. The Clerk of Court is DIRECTED to assign a district judge to this case for the  
19 purpose of closing the case and then to close the case; and,
- 20 4. The court DECLINES to issue a certificate of appealability.

21 IT IS SO ORDERED.

22 Dated: September 14, 2020

  
23 Dale A. Drayd  
UNITED STATES DISTRICT JUDGE

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